

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4173 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHARIFABEN G KALAKHAN NAGORI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR PR JOSHI for MR VIJAY H PATEL for Petitioner  
MR KC SHAH, AGP for Respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Sharifaben Gulabkhan Kalakhan Nagori has brought under challenge the detention order dated 30/3/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities of dealing in liquor as also threatening and beating witnesses in public and committing thefts. Following offences have been registered in the Palanpur City Police Station against him :-

- 1) CR 135/95 U/Ss.66B,65E of Bombay Prohi.Act  
Pending in Court.
- 2) CR 422/95 U/Ss.66B,65E of Bombay Prohi.Act  
Pending trial.
- 3) CR 53/96 U/Ss.66B, 65E & 81 of Bombay Prohi. Act  
Pending investigation.
- 4) CR 81/96 U/Ss. 66B, 65E & 81 of Bombay Prohi.  
Act  
Pending in Court.
- 5) CR 87/96 U/s.66(1)B, 65E, 81, 83, 98,99, of  
Bombay Prohi. Act read with ss.3, 130 &  
177 of the M.V. Act.  
Pending in Court.
- 6) CR 133/96 U/Ss. 66B, 65E & 81 of Bombay Prohi.Act  
Pending in Court.
- 7) CR 127/92 U/s. 379 of the IPC  
Pending in Court.
- 8) CR No.47/96 U/Ss. 504, 506(2), 114 of IPC read with  
sec.135 of Bombay Police Act  
Pending investigation.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of 8 witnesses have been recorded and relied upon.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the Ld. A.G.P. for the State. The

petitioner has challenged the aforesaid order of detention on number of grounds. But this petition can be disposed of on the ground that the petitioner has not been supplied with the copies of the statements of the witnesses on which subjective satisfaction is stated to have been reached for stamping the petitioner as a 'boot-legger'. There is no dispute about the fact that the copies of the statements of the witnesses are not supplied. This means that the right of the detenu for making effective representation is impaired and this clearly shows violation of Art. 22(5) of the Constitution of India. Reference in this connection has been made to a decision of the Supreme Court in the case of Smt. Shalini Soni v. Union of India reported in (1980) 4 SCC 544. Following observations of the Apex Court from para.7 may be noted:-

"The matter may also be looked at from the point of view of the second facet of Article 22(5). An Opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. 'Grounds' in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. Copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'."

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Shalini Soni's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

7. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Sharifaben Gulabkhan Kalakhan Nagori shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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